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IronTiger Logistics, Inc. and International Association of Machinists and Aerospace Workers, AFL-CIO. Case 16-CA-027543

March 25, 2015

DECISION AND ORDER

BY CHAIRMAN PEARCE AND MEMBERS JOHNSON
AND MCFERRAN

On October 23, 2012, the Board issued a Decision and Order in this proceeding, which is reported at 359 NLRB No. 13. Thereafter, the Respondent filed a petition for review in the United States Court of Appeals for the D.C. Circuit, and the General Counsel filed a cross-application for enforcement.

At the time of the Decision and Order, the composition of the Board included two persons whose appointments to the Board had been challenged as constitutionally infirm. On June 26, 2014, the United States Supreme Court issued its decision in *NLRB v. Noel Canning*, 134 S.Ct. 2550 (2014), holding that the challenged appointments to the Board were not valid. Thereafter, the court of appeals vacated the Board's Decision and Order and remanded this case for further proceedings consistent with the Supreme Court's decision and dismissed as moot the General Counsel's cross-application for enforcement.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

In view of the decision of the Supreme Court in *NLRB v. Noel Canning*, supra, we have considered de novo the judge's decision and the record in light of the exceptions and briefs. We have also considered the now-vacated Decision and Order, and we agree with the rationale set forth therein. Accordingly, we affirm the judge's rulings, findings, and conclusions and adopt the judge's

recommended Order to the extent and for the reasons stated in the Decision and Order reported at 359 NLRB No. 13, which is incorporated herein by reference.¹

Dated, Washington, D.C. March 25, 2015

Mark Gaston Pearce, Chairman

Harry I. Johnson, III, Member

Lauren McFerran, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

¹ We shall substitute a new notice in accordance with *Durham School Services*, 360 NLRB No. 85 (2014).

Member Johnson agrees with the finding that the Respondent violated Sec. 8(a)(5) and (1) by failing to respond to the Union's information request in a timely manner. A party cannot meet its statutory duty to bargain by simply refusing to respond to requests for presumptively relevant information, even if the party is not ultimately required to provide the information. By way of analogy, a party cannot ignore requests for privileged information; even though the party may have a defense to ultimately providing the information sought, there is a duty to communicate the asserted privilege to the requesting party. More broadly, a party simply cannot ignore a discovery request in civil litigation, even though there might be valid reasons to ultimately resist the request. Thus, Member Johnson sees no reason why a different standard is appropriate where presumptively relevant, but ultimately irrelevant, information is sought. Although the duty to bargain in good faith, and the derivative duty to provide information, are qualitatively different than civil discovery obligations, they are like obligations in that they all impose some affirmative duty to act once a request has been made. However, in circumstances different from this case, the concept of what constitutes a reasonably quick response satisfying the duty to provide information should be tempered by recognizing the potential difficulty of determining that no information actually exists. In that regard, it generally takes longer to determine the absence of something than the presence of something. Here, however, this case does not involve a Respondent that simply took a long time to discover ultimately that there was no information on the requested topic.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THENATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on
your behalfAct together with other employees for your bene-
fit and protectionChoose not to engage in any of these protected
activities.

WE WILL NOT fail and refuse to respond to information re-
quests made by International Association of Machinists and
Aerospace Workers, AFL-CIO, in a timely manner.

WE WILL NOT in any like or related manner interfere
with, restrain, or coerce you in the exercise of the rights
guaranteed you by Section 7 of the Act.

IRONTIGER LOGISTICS, INC.

The Board's decision can be found at
www.nlr.gov/case/16-CA-027543 or by using the QR code
below. Alternatively, you can obtain a copy of the decision
from the Executive Secretary, National Labor Relations
Board, 1099 14th Street, N.W., Washington, D.C. 20570, or
by calling (202) 273-1940.

